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16 IN THE UNITED STATES DISTRICT COURT  
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA

18 JON SCOTT DUNKLE,

19 Petitioner,

20 vs.

21 RON DAVIS, Warden of California  
22 State Prison at San Quentin,

23 Respondent.  
24

Case No. 06-cv-04115-PJH

Death Penalty Case

**JOINT CASE MANAGEMENT  
STATEMENT**

25  
26 Pursuant to this Court's Order regarding a joint case management statement from  
27 the parties (ECF No. 17), Petitioner Jon Scott Dunkle and Respondent Ron Davis, through  
28 undersigned counsel, hereby submit their Joint Case Management Statement as follows.

### Procedural History

Mr. Dunkle's state habeas lawyer filed a motion for appointment of federal habeas counsel on Mr. Dunkle's behalf on June 30, 2006. (ECF No. 1.) The Court granted the motion and referred the request for counsel to the Court's selection board. (ECF No. 3.) While waiting for counsel to be appointed, Mr. Dunkle's state habeas lawyer filed a motion for equitable tolling based on the lack of counsel and Mr. Dunkle's continuing incompetency (ECF No. 7), and a protective petition for writ of habeas corpus (ECF No. 8). Respondent opposed the motion as premature, noting that Mr. Dunkle's competency was in question and that further action should await the appointment of federal habeas counsel. (ECF No. 10.) This Court stayed the proceedings and denied the motion for equitable tolling without prejudice until counsel was located and appointed for Mr. Dunkle. (ECF No. 11.) Undersigned counsel for Mr. Dunkle filed a motion for appointment in this case on February 1, 2018, upon the request of the Office of the Federal Public Defender for the Northern District of California. (ECF No. 14.) The Court granted counsel's motion (ECF No. 15), and ordered the parties to file this statement (ECF No. 17).

### Joint Request for Case Management Schedule

The parties have conferred and discussed the status of the case, Mr. Dunkle's current mental status, and the case file that Mr. Dunkle's counsel has collected thus far. Pursuant to that discussion, the parties have reached a tentative settlement agreement contingent upon action by the California Supreme Court in this case. Accordingly, the parties jointly request that the Court adopt the following case management schedule:

1. On **June 22, 2018**, along with this statement, counsel for Mr. Dunkle will file a stipulated motion for court order, ordering that San Quentin State Prison provide Mr. Dunkle's counsel with a complete copy of his prison medical records, mental-health records, and the Central File (or "C-file"), containing the remainder of Mr. Dunkle's prison/offender records. This court order is necessary because Mr. Dunkle was deemed incompetent by the California state courts, and thus cannot provide a signed release to

1 federal habeas counsel. Counsel requires these records to understand the nature and scope  
2 of Mr. Dunkle's current mental- and physical-health conditions and the treatment he has  
3 received while in prison. Staff at San Quentin have indicated that a court order will be  
4 sufficient for counsel to receive Mr. Dunkle's records in the absence of a signed release.

5 2. Although counsel for Mr. Dunkle has been working diligently to obtain the  
6 case file from prior counsel, the files counsel has obtained thus far do not contain any  
7 portion of the clerk's transcript or the majority of the reporter's transcripts in this matter.  
8 Counsel for Respondent has agreed to retrieve his files from storage, have them scanned,  
9 and provide an electronic copy of those files to counsel for Mr. Dunkle by **September 30,**  
10 **2018.**

11 3. After counsel for Mr. Dunkle receives the files from Respondent's counsel  
12 and San Quentin, they will require a period of time in which to review the files and  
13 familiarize themselves with the state-court proceedings and with Mr. Dunkle's records.  
14 Following this review and absent any unexpected findings, counsel for Mr. Dunkle will  
15 file an unopposed motion with this Court requesting a stay of the federal habeas corpus  
16 proceedings and permission to represent Mr. Dunkle in state court on a successive state  
17 habeas petition to be filed in the California Supreme Court. Counsel intends to file this  
18 motion **on or before April 1, 2019**—six months after they receive the court record from  
19 Respondent's counsel. During this time, counsel for Mr. Dunkle will also endeavor to  
20 obtain a new guardian ad litem for Mr. Dunkle if necessary.<sup>1</sup>

21 4. Following this Court's order on the unopposed motion for stay, counsel for  
22 Mr. Dunkle will file the proposed successive state habeas petition. This petition will raise  
23 a claim under California Penal Code § 1509(d) that Mr. Dunkle's mental-health condition  
24 renders him ineligible for a death sentence pursuant to *Ford v. Wainwright*, 477 U.S. 399  
25 (1986), because he is permanently incompetent to be executed. Counsel intends to file this

26  
27 <sup>1</sup> Mr. Dunkle's prior counsel, Conrad Petermann, was appointed as guardian ad litem for  
28 Mr. Dunkle in the initial state-habeas proceedings on July 24, 2002. However, this  
appointment was "for the limited purpose of preparing and pursuing defendant's [state]  
habeas petition." (See ECF No. 1, Ex. A at ¶ 2.)

1 successive petition and the necessary exhibits **within 60 days** of the Court's order  
2 authorizing the state-court representation. Counsel for Respondents will ask the California  
3 Supreme Court to waive any hearing and to decide the matter on the pleadings and record  
4 provided.

5 5. During the pendency of the state-habeas proceeding, counsel for Mr. Dunkle  
6 will file status reports with this Court **every 60 days**.

7 6. Following a decision by the California Supreme Court granting the  
8 successive petition and vacating Mr. Dunkle's death sentence, counsel for Mr. Dunkle will  
9 return to this Court and move to dismiss all sentencing or penalty related claims in the  
10 federal habeas corpus proceedings. Counsel for Mr. Dunkle, along with a guardian ad  
11 litem if necessary, will also make a determination at that time whether to pursue any of  
12 Mr. Dunkle's existing guilt-phase claims, move for leave to file an amended petition for  
13 federal habeas corpus relief alleging additional guilt-phase claims, or move to dismiss  
14 those claims as well. If for some reason the California Supreme Court denies the  
15 successive petition, counsel for both parties will alert the Court and jointly file a proposed  
16 briefing schedule for the federal habeas corpus proceedings.

17 Respectfully submitted this 22nd day of June, 2018.

18 JON M. SANDS  
19 Federal Public Defender

20 Jennifer Y. Garcia  
21 Jessica M. Salyers  
22 Assistant Federal Public Defenders

23 By /s/ Jennifer Y. Garcia  
24 Attorneys for Petitioner  
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XAVIER BECERRA  
Attorney General of California  
Rene Antonio Chacon  
Supervising Deputy Attorney General

By /s/ Rene Antonio Chacon  
Attorneys for Respondent

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of June, 2018, I electronically transmitted the foregoing to the Clerk's office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

California Appellate Project  
Habeas Corpus Resource Center  
Habeas Capital Notification

I hereby certify that on this 22nd day of June, 2018, I served the attached document by mail on the following, who are not registered participants of the CM/ECF system:

Conrad Petermann  
Guardian Ad Litem  
323 East Matilija Street  
Suite 110, PMB 142  
Ojai, CA 93023

/s/ Catherine Jacobs  
Assistant Paralegal  
Capital Habeas Unit